

1 I, David J. Silbert, declare and state that:

2 1. I am an attorney licensed to practice in the State of California and before this
 3 Court. I am a partner in the law firm of Keker & Van Nest LLP and counsel for Google Inc.
 4 (“Google”), defendant in the above-entitled action. I have personal knowledge of the facts stated
 5 herein and, if called as a witness, I would testify competently thereto.

6 2. Attached hereto as Exhibit A is a true and correct copy of Google Inc.’s verified
 7 Objections and Responses to Plaintiff’s First Set of Interrogatories.

8 3. On or about May 1, 2009, Mr. Almeida served his Responses to Google’s First
 9 Set of Interrogatories and First Set of Requests for Production of Documents. True and correct
 10 copies of these responses are attached as Exhibit B and C hereto. As can be seen from Exhibit B,
 11 Mr. Almeida objected to all of the interrogatories. He also failed to produce any documents.

12 4. On or about June 5, 2009, I spoke with about Michael Storti, counsel for Mr.
 13 Almeida regarding Mr. Almeida’s discovery responses. Mr. Storti explained that he had not
 14 provided any substantive responses, nor produced any documents, because Mr. Almeida intended
 15 to withdraw from the case. Mr. Storti requested that Google stipulate to an amended complaint
 16 that would substitute a new named plaintiff for Mr. Almeida. Google declined to do so.

17 5. After Google drew Mr. Almeida’s attention to *Lierboe v. State Farm Mutual*
 18 *Automobile Insurance Co.*, 350 F.3d 1018 (9th Cir. 2003), Mr. Almeida agreed that dismissal,
 19 not amendment, was the appropriate way to dispose of this action.

20 6. On or about July 16, 2009, Mr. Storti forwarded me a proposed stipulation to
 21 dismiss the action. A true and correct copy is attached hereto as Exhibit D. Mr. Almeida’s
 22 proposed stipulation required that “each party shall bear his or its own attorneys’ fees, costs and
 23 expenses” and also that Google “will not seek or pursue a malicious prosecution claim against
 24 Plaintiff arising from or in connection with this Action.”

25 7. As a gesture of good faith, Google offered not to seek its costs as the prevailing
 26 party in the action. Google declined, however, to waive any claims against Mr. Almeida.

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1 I declare under penalty of perjury that the foregoing is true and correct, and that this
2 declaration was executed on October 9, 2009 in San Francisco, California.
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5 By: /s/ David Silbert

6 David J. Silbert
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